

H. B. WOOLFALK & ASSOCIATES, P.C.

A T T O R N E Y S A T L A W

113 WALWORTH AVENUE
SCARSDALE, NEW YORK 10583-1140
TELEPHONE: 914-725-4406 • FACSIMILE: 914-725-4329

June 6, 2014

By ECF & E-Mail (Torres_nysdchambers@nysd.uscourts.gov)
The Honorable Analisa Torres
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *John Swann Holding Corp. v. Simmons, et al.*, 13 Civ. 08619 (AT) (JLC);
Letter Motion for the Filing of Papers Under Seal on an Order To Show
Cause for Withdrawal as Counsel of Record for Defendant Corey
Simmons

Dear Judge Torres:

Pursuant to the Court's Individual Practices §I(E), my firm H.B. Woolfalk & Associates, P.C., of counsel Jonathan S. Sanoff, Esq. and I hereby request that the Court enter an order directing the filing under seal of papers supporting and opposing a motion to be brought by order to show cause, to be filed by us forthwith, pursuant to S.D.N.Y. Local Civil Rule 1.4, for our withdrawal as counsel of record for defendant Corey Simmons. If Mr. Simmons is not represented by counsel on the motion, then we will file his opposing papers, if any, under seal for him, expeditiously following our receipt of same. We further request the order to direct that service of the supporting and opposing papers be limited to only Mr. Simmons, the Court and us.

As we understand Individual Practices §III(A)(i), a pre-motion conference is not required because we will move by order to show cause. If withdrawal is granted, we will remain in the case as counsel for defendant Annette Strickland.

The Hon. Analisa Torres, U.S.D.J.
June 6, 2014
Page 2

The papers supporting and opposing withdrawal should be filed under seal to preserve attorney/client confidences and avoid prejudice to Mr. Simmons. *Team Obsolete, Ltd. v. AHRMA, Ltd.*, 464 F. Supp. 164, 165 (E.D.N.Y. 2006) (“the relevant case law demonstrates that documents in support of motions to withdraw as counsel are routinely filed under seal where necessary to preserve the confidentiality of the attorney-client relationship between a party and its counsel, and that this method is viewed favorably by the courts”); *ISC Holding AG v. Nobel Biocare Invest., N.V.*, 759 F. Supp.2d 289, 293-94 (S.D.N.Y. 2010), *aff’d* 688 F.3d 98 (2d Cir. 2012).

The papers should not be required to be served on plaintiff’s counsel or counsel for defendant Fields, because they will relate only to the attorney/client relationship and therefore do “not implicate” the plaintiff’s or defendant Fields’ “interests in this litigation.” *Team Obsolete v. A.H.R.M.A., Ltd.*, 464 F. Supp. at 164; *Harrison Conference Services, Inc. v. Dolce Conference Services, Inc.*, 806 F. Supp. 23, 25-26 (E.D.N.Y. 1992) (other parties had no interest in outcome of attorney/client dispute, and were “not entitled to a more complete description of this dispute, or a briefing schedule which will permit them to respond further”).

In a May 13, 2014 letter, which we received from plaintiff’s attorneys, Mr. Simmons’ counsel in a related New York State Supreme Court action advised the presiding judge therein of Mr. Simmons’ “dissatisfaction” with us. (A copy of the letter is attached as Exhibit A hereto; see p. 1, ¶3.) This a public example of the breakdown in the attorney/client relationship that we believe we are obligated to advise will be the basis of our withdrawal application. *Team Obsolete v. AHRMA, Ltd.*, 464 F. Supp. at 164 (other parties should be informed of “the basis” for motion to withdraw). However, the other relevant matters should be kept confidential. We therefore request

The Hon. Analisa Torres, U.S.D.J.

June 6, 2014

Page 3

that the Court grant this letter motion and order that (a) our moving and reply papers in support of the withdrawal motion to be brought by order to show cause shall be filed under seal and served only upon Mr. Simmons and the Court, and (b) Mr. Simmons' opposing papers, if any, shall be filed under seal, with our assistance if necessary, and served only upon us and the Court.

Respectfully



Harold B. Woolfalk

cc: Counsel of record (by ECF)

Mr. Corey Simmons (by email:
corey@clubcreate.com,
clubcreate@gmail.com and
ccreate00@gmail.com)